

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of the Section 251 Unbundling)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange)	
Carriers)	

**REPLY COMMENTS OF SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC**

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October 19, 2004

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**COMMENTS OF SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC.**

INTRODUCTION

Supra Telecommunications and Information Systems, Inc. (“Supra” or “Supra Telecom”) a competitive local exchange carrier (“CLEC”) providing competitive local telecommunications services in Florida pursuant to Section 214 of the Communications Act of 1934 and state certificates of public convenience and necessity, hereby submits reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking in WC Docket No. 04-313 and CC Docket No. 01-338.

In the Commission’s NPRM issued on August 20, 2004, the Commission sought comment on how to respond to the D.C. Circuit’s *USTA II* decision in establishing sustainable new unbundling rules under sections 251(c) and 251(d)(2) of the Act. Specifically, the Commission sought comment on the changes to the Commission’s unbundling framework that are necessary, given the guidance of

the *USTA* // court. Supra presents these reply comments in response to the Commission's request.

**THE FCC AND THE ILECS CONSIDERED UNE-P COMPETITION AS
SUFFICIENT FOR SECTION 271 TO ALLOW THE BELL COMPANIES INTO
THE LONG DISTANCE MARKET.**

It is ironic that the Bell Companies claimed UNE-P was real, viable competition when they were filing their 271 applications with the FCC. Now that the Bell Companies have received their 271 approval, they are claiming that UNE-P is "completely synthetic competition"¹ that should be eliminated. UNE-P is the tool that allowed CLECs to begin to compete and build up a customer base sufficient that the FCC determined it could remove competitive safeguards and allow the BOCs into the long distance market. Now that the Bell's have won 271 approval, they want the FCC to take UNE-P away so that the CLECs are unable to effectively compete.

**STATES HAVE AUTHORITY TO IMPOSE ADDITIONAL BUNDLING
OBLIGATIONS.**

The Bells' wish list includes a request that the Commission rule that states have no authority to impose unbundling obligations of any sort on Bell Operating

¹ See Initial Comments of BellSouth Corporation, p. 2.

Companies pursuant to section 271.² However, this position is 180 degrees opposite to the position BellSouth took in 1995 when it filed comments in the FCC's first NPRM in the Local Competition Docket and declared that states are responsible to identify UNEs under section 251(c)(3).³ The operative phrase in this instant proceeding is "pursuant to 271." While Congress identified only a limited role for states within section 271⁴ in regards to reviewing a Bell's request for 271 interLATA authority, Congress did not use section 271 to prohibit states from imposing their own unbundling obligations above and beyond those found in section 251 or 271 once a Bell company had been granted authority to enter the long distance market under section 271⁵. In fact, section 251 and section 271 represent the minimum unbundling requirements that the ILECs must meet,

² See Initial Comments of BellSouth p. 4.

³ See First Report and Order in Docket No. 96-325, paragraph 229. "BellSouth, in contrast, interprets section 251(c)(3) as requiring the Commission to identify network elements only when a state commission has failed to carry out its responsibilities under section 252, and the Commission assumes those responsibilities under section 252(e)(5).".

⁴ And a more limited obligation to the ILEC as compared to that imposed under section 251.

⁵ This "decidedly novel " situation is discussed in footnote 10 to the Supreme Court opinion in *AT&T CORP. v. IOWA UTILITIES BD.* (97-826), Decided January 25, 1999 (525 U.S. 366, 119 S.Ct. 721 1999). Justice Scalia wrote:

10 Justice Thomas notes that it is well settled that state officers may interpret and apply federal law, see, e.g., *United States v. Jones*, 109 U.S. 513 (1883), which leads him to conclude **that there is no constitutional impediment to the interpretation that would give the States general authority, uncontrolled by the FCC's general rulemaking authority, over the matters specified in the particular sections we have just discussed.** *Post*, at 12—13. But constitutional impediments aside, we are aware of no similar instances in which federal policymaking has been turned over to state administrative agencies. The arguments we have been addressing in the last three paragraphs of our text assume a scheme in which Congress has broadly extended its law into the field of intrastate telecommunications, but in a few specified areas (**ratemaking, interconnection agreements, etc.**) **has left the policy implications of that extension to be determined by state commissions**, which—within the broad range of lawful policymaking left open to administrative agencies—are beyond federal control. Such a scheme is decidedly novel, **and the attendant legal questions, such as whether federal courts must defer to state agency interpretations of federal law, are novel as well.** (Emphasis added)

regardless of what a state commission finds. States have their own authority to pass legislation that can require the ILECs to unbundle any and all network elements for the provisioning of local telecommunications services within their respective states. For example, in the state of Florida, the main state in which Supra Telecom provides service, the Florida legislature passed chapter 364 which requires BellSouth, Verizon, Sprint, and other ILECs to unbundle their network and sell it wholesale to CLEC competitors. Nothing in Florida's Chapter 364 unbundling law suggests that Florida's unbundling rules can be over-ridden by federal unbundling rules. Both Connecticut⁶ and Maine⁷ have recently taken the same position that their authority under state law allows for the continuation of exiting UNE elements at TELRIC rates, despite any FCC order to the contrary.

The fact that Congress gave the FCC authority over reviewing the Bells' 271 applications and approving their entry into the long distance market does not mean that states cannot establish their own unbundling rates, terms, and conditions. Although Congress gave the FCC authority to determine the Bells' compliance with Section 271 for approval to enter the long distance market, Congress did not prohibit states from legislating their own laws requiring⁸ the Bells' to unbundle their networks and price them at TELRIC. Congress limited the FCC's role to determining the Bells' compliance with Section 271, not to over-

⁶ Order in DOCKET NO. 96-09-22RE01 Dated August 25, 2004.

⁷ Order in Docket No. 2002-682, filed September 3, 2004.

⁸ Or holding the RBOC to promises the RBOC made to the state Commission pursuant to 271 approvals, which is the position Maine took.

riding state law regarding the unbundling and pricing of the Bells' network. Thus, in states where the legislatures have had the foresight to pass their own laws requiring ILECs to unbundle their networks, many state commissions have the ability and the authority to ensure local competition by still requiring the Bells' to unbundle their networks regardless of whether the Bell has been granted 271 approval. State commissions are in the best position to determine the unbundling rules – the rates, terms, and conditions – that will best preserve, protect, and foster local telephone within their respective states.

The fact that a BOC has received 271 approval does not exempt the BOC from state laws requiring it to unbundle its network. While the FCC has determined that BOCs will have fewer unbundling requirements under section 271 than section 251, section 271 approval does not diminish, lessen, or change in any way, an individual state's laws requiring the BOC to unbundle its network. This includes the state equivalent of the FCC's section 251 TELRIC pricing of unbundled network elements. State commissions, operating under the appropriate state law, can, and should, continue to require the BOCs (and other ILECs) to price their unbundled network elements at TELRIC prices.

INTERMODAL COMPETITION - CMRS AND CABLE TV INTERMODAL SWITCHING IS NOT AN ALTERNATIVE FOR CLEC SWITCHING WITHIN A MARKET.

BellSouth and the other BOCs again allege that CMRS switches and/or Cable TV switches (intermodal switching alternatives) should also be considered when analyzing self-provisioning switching or wholesale provisioning of switching in a geographic market. The FCC has already heard the Bells' arguments on this issue and soundly rejected it concluding that CMRS switches or switches used in Cable TV networks are not adequate substitutes for LEC-provided unbundled local switching be used in the analysis for either the first or second trigger.

The Commission found that CMRS providers do not provide service that is a suitable substitute for local circuit switching. As many know from their own personal experience with cellular phone service, voice clarity seldom compares to the clarity of a wireline call, calls are often dropped mid-sentence, service is simply unavailable in many areas, and despite recent improvements, surfing speeds on the internet via a cell phone are still amazingly slow⁹. As the FCC has stated earlier,

“We also find that, despite evidence demonstrating that narrowband local services are widely available through CMRS providers, wireless is not yet a suitable substitute for local circuit switching.....the record demonstrates that wireless CMRS connections in general do not yet equal traditional landline facilities in their quality and their ability to handle data traffic.”¹⁰

⁹ Many such connection run at 9.6 kbaud or less still, to this day. That speed would be fully unacceptable for an ISP as a dialup Internet offering to a wireline customer.

¹⁰ TRO para. 445.

“...we note that CMRS does not yet equal traditional incumbent LEC services in its quality, its ability to handle data traffic, its ubiquity, and its ability to provide broadband services to the mass market...”¹¹

The FCC stated that that Bell companies had not presented evidence that either CMRS or Cable TV switching provided CLECs access to the ILEC’s DS0 loops. Thus, neither CMRS nor Cable TV switching could be considered as intermodal alternatives for wholesale switching for purposes of this docket.

“We are unaware of any evidence that either technology (cable or CMRS) can be used as a means of accessing the incumbents’ wireline voice-grade local loops. Accordingly, neither technology (cable or CMRS) provides probative evidence of an entrant’s ability to access the incumbent LEC’s wireline voice-grade local loop and thereby self-deploy local circuit switches.”¹²

The FCC explicitly stated that CMRS providers were not viable intermodal switch providers when analyzing CLEC self-provisioning switching or wholesale provisioning of switching in a geographic market.

“at this time, we do not expect state commissions to consider CMRS providers in their application of the triggers.”¹³

The FCC stated that its intermodal switching analysis was based, in part, on evidence from the intermodal loop analysis.¹⁴ Regarding the intermodal loop

¹¹ TRO para. 230 and footnote 1549.

¹² See TRO para. 446.

¹³ See TRO footnote 1549.

¹⁴ See TRO footnote 1355 which reads, “We note that our analysis of intermodal switching alternatives is informed by the evidence of intermodal alternatives relating to local loops. Because commenters devoted a significant amount of discussion to cable and wireless facilities as

analysis which included analyzing the use of Cable TV networks to provide voice services, the FCC stated:

“Upon review of the extensive record on intermodal competition compiled in this proceeding, we determine that, although the existence of intermodal loops does not warrant a finding of no impairment, such competition is a factor to consider in establishing our unbundling requirements... Neither wireless nor cable has blossomed into a full substitute for wireline telephony.”¹⁵

The FCC clearly stated that intermodal switching provided by CMRS and Cable TV networks were insufficient for them to make a finding of no impairment.

“In particular, we determine that the limited use of intermodal circuit switching alternatives (CMRS and Cable TV) for the mass market is insufficient for us to make a finding of no impairment in this market, especially since these intermodal alternatives are not generally available to new competitors.”¹⁶

The only type of intermodal switching capability that the Commission determined was reasonable to consider as a viable switching alternative was packet switching. The Commission stated that packet switches could be considered but only to the extent that they are used to provide local voice service to the mass market.¹⁷

Even if the wireless carriers could overcome their inferior service quality and extremely slow data capabilities and provide service on par with landline

substitutes for local loops, evidence of intermodal alternatives is also discussed under our analysis of local loop unbundling.”

¹⁵ See TRO para. 245.

¹⁶ See TRO para. 443.

¹⁷ See TRO footnote 1549.

facilities, it is highly unlikely that any of the wireless carriers would voluntarily open their networks for CLECs to use to provide competing voice and data services. The majority of national wireless carriers are wholly owned by the Bells who have tenaciously resisted opening up their wireline networks to competition and likewise have no incentive to open up their wireless networks to CLECs. It is extremely improbable that the Bells would allow CLECs to use their wireless facilities to provide competing local telephony especially since the Bells have spent the past eight years fighting the CLECs to prevent them from using their wireline networks. Of the six major national wireless providers, four are owned by the BOCs and Sprint (the largest national ILEC after the Big 4 RBOCs). BellSouth and SBC jointly own Cingular and AT&T Wireless, Verizon controls Verizon Wireless, and Sprint controls Sprint PCS. T-Mobile and NexTel are the only national wireless carriers that are not owned by an ILEC operating in the United States; but remain a potential takeover target not just for Qwest (the only BOC the does not yet own a wireless carrier), but as a market share consolidation merger for Verizon, SBC, BellSouth, and Sprint. Cable providers have even less incentive, or obligation to unbundle their networks voluntarily. This market¹⁸, as the record in this proceeding already shows, simply does not exist, and will not exist without compelling legislation.

¹⁸ I.e. Third party suppliers of local switching.

**THE OPERATIONAL AND ECONOMIC BARRIERS CAUSED BY BELL SOUTH
IMPAIR SUPRA'S ABILITY TO SERVE MASS MARKET CUSTOMERS VIA
UNE-L.**

Last year, the FCC concluded that on a national level, CLECs serving the mass market were impaired without access to unbundled local switching based on evidence regarding the operational and economic barriers caused by the cut over process. The FCC stated:

"We find on a national basis, that competing carriers are impaired without access to unbundled local circuit switching for mass market customers. This finding is based on evidence in our record regarding the economic and operational barriers caused by the cut over process. These barriers include the associated non-recurring costs, the potential for disruption of service to the customer, and our conclusion, as demonstrated by our record, that incumbent LECs appear unable to handle the necessary volume of migrations to support competitive switching in the absence of unbundled switching. These hot cut barriers not only make it uneconomic for competitive LECs to self-deploy switches specifically to serve the mass market, but also hinder competitive carriers' ability to serve mass market customers using switches self-deployed to serve enterprise customers."¹⁹

Unfortunately, little has changed in the year since the FCC reviewed the operational and economic barriers to entry. The overwhelming majority of BOCs, including BellSouth, still price hot cut nonrecurring charges at multiples of six times or more above actual cost which makes conversion to UNE-L uneconomic for CLECs to the extent where the FCC concluded that CLECs were impaired nationally without access to unbundled local switching for mass market

¹⁹ See TRO para. 459.

customers. Networks built using Carrier Served Areas (“CSA”)²⁰ to enhance the BOC profitability are proving exceptionally difficult to unbundle to UNE-L in a cost effective manner. Ignoring the “forward looking” and “most efficient network configuration” tenets of the TELRIC pricing standard, the BOC is insisting on being compensated for each and every step involved in the undue cost of unbundling, while enjoying all of its cost benefits for its own subscribers. BellSouth was charging \$49.57 per hot cut when the FCC last found that the Bells nonrecurring charges for hot cuts were an economic barriers to entry. BellSouth is now charging \$59.31²¹ and maintaining its enormous barrier to entry. As the FCC noted last year in its Triennial Review Order, high nonrecurring charges for hot cuts caused CLEC entry to be uneconomic. The FCC also noted that customer churn exacerbates the problem of uneconomic entry due to high non-recurring per-line charges for connecting a carrier’s own switch to an unbundled loop.²² The FCC found that as a result of these barriers, there has only been minimal deployment of CLEC-owned switches to serve mass market customers. The FCC found that the characteristics of the mass market raise significant barriers to CLECs self-provisioning switching to serve mass market customers and required state commissions to develop and implement a batch cut process to overcome those barriers.

²⁰ utilizing Digital Loop Carrier (“DLC”), particularly the integrated form (“IDLC”)

²¹ Not through an approved rate change, but by its own self-help tactic of billing

²² See TRO footnote 1405

Hot cuts continue to be one of the largest operational and economic barriers to CLEC entry in the mass market especially in the conversion of UNE-P to UNE-L customers. As discussed above, the ILEC's inability to perform hot cuts in a timely manner without undue service disruption to the customer was the key reason the FCC found previously that CLECs serving the mass market are impaired without access to unbundled local switching.²³ The FCC's finding was based on evidence regarding the economic and operational barriers caused by the cut over (i.e., hot cut) process.²⁴ The FCC stated,

"...we conclude that the operational and economical barriers arising from the hot cut process create an insurmountable disadvantage to carriers seeking to serve the mass market, demonstrating that competitive carriers are impaired without local circuit switching as a UNE."²⁵

Since the FCC's most recent investigation last year, Supra has attempted to convert several thousand customers from UNE-P to UNE-L but was forced to discontinue doing more conversions due to the overwhelming costs, service disruptions, and other difficulties Supra and its customers experienced with BellSouth's hot cut process. BellSouth's performance in executing hot cuts in Florida has not improved since the FCC's previous investigation and still remains an economic and operational barrier to Supra successfully serving its customers with its own switches. For these reasons, the FCC should find that CLECs, at

²³ See TRO para. 419, 422.

²⁴ See TRO para. 459.

²⁵ See TRO para. 475.

least in the BellSouth region in Florida, are still impaired without access to unbundled local switching for mass market customers.

BELLSOUTH'S POOR PERFORMANCE IS EXECUTING HOT CUTS AND BATCH HOT CUTS IS IMPAIRING SUPRA'S ABILITY TO SERVE MASS MARKET CUSTOMERS VIA UNE-L.

BellSouth alleges that it has demonstrated that it offers a proven, seamless and high quality hot cut process;²⁶ however, this has not been Supra's experience with BellSouth's hot cut process. BellSouth has not demonstrated either a proven, seamless or high quality hot cut process, much less all three. During the month of November 2003 when Supra Telecom converted over 2,400 customers from UNE-P to UNE-L, those customers experienced No Dial Tone ("NDT") on the date of conversion between 4-5% of the time and could not receive calls for a period of four (4) hours or more 47% of the time. This trend continued into December 2003 and January of 2004. This evidence does not reflect a seamless or high quality process.

Additionally, the BellSouth processes in place to rectify NDT and incoming calls problems do not lend themselves to timely resolution of these troubles. In fact, BellSouth does not even consider these NDT outages part of the hot cut process,

²⁶ See Initial Comments of BellSouth; Exhibit 2, Affidavit of Kenneth L. Ainsworth, Keith Milner, and Alphonso J. Varner on Behalf of BellSouth Telecommunications Inc., ("BellSouth"), p. 3.

choosing instead to call them “post conversion repair issues” which they can bill an additional \$80 - \$150 per occurrence, and Supra documents substantial instances where two, three, or even four such calls are required, and billed to the CLEC, before BellSouth locates its error and fixes it.

Some 38% of all loops in BellSouth’s Florida region are routinely converted from IDLC to Copper / UDLC with the attendant likelihood of translations errors, intermittent connections, errors due to bad cable records, and the sequencing, or lack thereof of the many separate service orders or work orders generated by the ILEC in response to a single CLEC LSR. If the sequencing of orders is not controlled, a delayed work order can actually undo working service causing such NDT outages.²⁷ For example, a customer experiencing NDT upon cutover can typically expect a twenty-four hour window for repair, once the call is scheduled by BellSouth. With multiple callouts to resolve the same problem, it is not uncommon for a 7 day loss of dial tone on a distinct percentage of conversions. These service disruptions have influenced the customer’s perception of Supra Telecom’s ability to provide quality service and resulted in migrations away from Supra Telecom to other carriers. Issues with number portability notification which were not timely sent to the CLEC can and did result in a customer’s inability to receive incoming calls for unacceptable periods of time, up to five days.

²⁷ This is quite similar to the experience we had with BellSouth resale in 1997/98 and UNE-P conversions in 2001/02 until the OSS problems were identified and NDT issues declined. This process improvement has not yet begun for UNE-L conversions.

In state TRO testimony, BellSouth admitted that its field forces would report all such completed conversions before 5:00 PM, but could not explain the bursts of go-ahead notices received after 7:00 PM and after 9:00 PM on a regular basis. The CLEC has no way to schedule personnel to perform this work, if 2-4 hours after the Bellsouth departments go home, number porting go-ahead notices suddenly flow in, and sit until the next morning. As these delayed go-ahead porting notices were not late every day, predicting when they would be late became an impossible activity.

Additionally, the incoming calls issue becomes more problematic when a telephone number has been "ported in error" due to a missed appointment or cancellation. BellSouth's current process requires Supra Telecom to submit a supplement (SUP) to the LSR and fax Form RF-3654 (*CLEC Port in Error Referral For Local Carrier Service Center*). Further, SUP LSR must be sent to BellSouth® LCSC and revised FOC received by CLEC prior to CLEC sending a Modify Subscription Version (SV) to NPAC. Meanwhile, no incoming calls can terminate to the customer's telephone number. Overall, when there is a problem, the current processes do not provide for timely restoration of service.

BellSouth imposes limits on the number of conversions Supra is allowed per day and per central office. Despite BellSouth's claims that they can perform high volumes of conversions with a high degree of accuracy, BellSouth limits Supra's

conversions to 150 per central office, per day. This may be considered high volume in central offices with a few hundred existing UNE-P customers, but in some COs with 26,000 UNE-P customers, it comprises 174 working days or approximately eight (8) months to complete the conversion.

BellSouth describes the three levels offered by BellSouth for coordinating the hot cut process. Supra has not used the level entitled “Coordinated/Time Specific” option as yet, though Supra contemplates doing so for its small business customers in the future. The level entitled “Coordinated” conversion normally means that all parties involved from both sides of the conversion are in direct communication as the conversion takes place. In this case, BellSouth indicates that they will communicate internally during the conversion, and then attempt to contact the CLEC to notify them of the conversions completion. This is not what the industry considers “coordinated” nor is it time specific unless both carriers are communicating during the conversion.

BellSouth’s coordinated process does not allow for parties to communicate during the conversion process. It allows for communication with the CLEC only AFTER the cut is complete. Prior to the cut CWINS²⁸ clears with the CLEC, CWINS and the CO/Field make the cut and then they call the CLEC back. The CLEC is not on a conference call during the actual cut. As noted above,

²⁸ BellSouth department to interface with wholesale customers on repair, and technical provisioning issues.

“coordinated” should imply that all parties are communicating during the cut-over process. If BellSouth were to implement a true coordinated conversion, then the assumption of satisfactory completion would be unnecessary and any potential for an out of service (OOS) condition would be eliminated. As it is described herein, the delays input by this process could cause up to 12 hours of an out-of-service condition while awaiting a response from the CLEC. Furthermore, there is an assumption of successful completion; what is the process if it was not successful? This is a process not described in any of the cutover processes described by BellSouth. Nor have they described the rollback process if there is a problem on either side. Instead the conversion of the non-working line is marked complete, and rectification of the problem occurs as a normal “repair” activity, for which the CLEC is billed \$80-\$150 per instance. As it has taken as many as four such calls to rectify “bad conversions” with Bell South admitting its error, but Billing Supra all the same. The CLEC must staff to search these occurrences out of 750,000 (plus) pages of billing each month and dispute them, or suffer further increased costs, unnecessarily.

Supra’s experience with BellSouth’s hot cut process in November and December of 2003 with over 5,400 conversions including individual orders and the batch process, has clearly illustrated that the (lack of an) order completion step is the greater of two major out-of-service conditions encountered in the conversion process. BellSouth has no metric nor have they offered one similar to Verizon’s to assure that the ILEC technicians will enter completions into their systems in a

timely manner The extent of their commitment is that they will only commit to make a best effort to enter the completions in less than four (4) hours. This commitment is entirely dependant upon the mood, attitude or workload of a technician that sees the CLEC as the enemy. This lack of a metric or codified process has led to completion notices being received by Supra Telecom as late as midnight of the conversion due date, and yet all the technician technicians go home at 5:00 PM according to Bellsouth! In contrast, Verizon requires that its technicians enter the completions every 20 orders or using their time studies, every 74 minutes. The technicians are measured and graded based on this requirement.

BellSouth alleges that its coordinated conversions assure the highest level of coordination and communication during the provisioning process. What is ignored, however, is that during the most critical point in the process, the actual conversion, this coordination and communication is nonexistent. The process does not assure direct notification at the conclusion of the conversion. It only assures that an attempt will be made to notify the CLEC. This is similar to the purported best effort to enter completions into the service order system in a timely manner during un-coordinated conversions. Neither function is measured, scored or reported.

BellSouth alleges that its uncoordinated conversion is low cost; however BellSouth charges Supra \$59.31, for an un-coordinated conversion to UNE-L of a

2-wire Voice Grade Analog loop in service as a UNE-P loop²⁹. This is far from low cost, particularly when the post-conversion repair calls are added in to resolve errors originally committed as part of the conversion, but billed as if they were a separate event, even after BellSouth admits to Supra that a given outage was caused by BellSouth. Close examination of the cost factors used to substantiate the rate used for UNE-P to UNE-L conversion NRCs, have revealed numerous Outside Plant, administrative and engineering costs loaded into the charge. These costs do not apply in the majority of the simple conversions of a customer's copper loop from BellSouth to the CLEC switch port. In fact in the Florida rate setting procedure it was accepted that the exact same amount of time was allowed to be recovered for the exact same steps for a a) POTS loop, b) ISDN BRI, c) ADSL, d) DS1, e) HDSL UNE-L loop rate. Imagine – the same amount of time to troubleshoot at the cross-box and the customer premise for each type of loop! This Commission found such rates presented issues that needed to be resolved in the initial TRO order. A fair-minded review of the national rate structures, and cost recoveries for UNE-L rates could itself be found to be a national impairment. Resolution of these issues, nascent until the TRO threatened the elimination of UNE-P, will take time.

BELLSOUTH'S HIGH NON-RECURRING CHARGE FOR HOT CUTS IS

²⁹ And approx \$140 for a coordinated conversion of a loop with test capability. No uncoordinated conversion for a loop with thetest capability (the predominant form of retail / resale / and UNE-P served loops) is available, which leads to order rejections due to "No facilities", when the existing loop could actually serve, but is not an SL1 loop.

IMPAIRING SUPRA'S ABILITY TO SERVE MASS MARKET CUSTOMERS VIA UNE-L.

BellSouth charges an exorbitant nonrecurring charge to Supra Telecom for converting UNE-P to UNE-L or migrating a Supra customer loop from BellSouth's switch to Supra's switch which is based upon the notion that for any loop not served by copper³⁰ will have to be rebuilt as copper³⁰. The charge is approximately 6 times the actual cost to BellSouth, because the avoided costs of converting a copper loop are still burdened with cost recovery for work times which only occur in an IDLC served loop. It is not surprising that BellSouth would try to enforce an outrageous rate. BellSouth proposed a rate of \$178 for resale to UNE-P conversions, but the FPSC later determined t(1998) hat the cost-based rate (not TELRIC) was only \$1.47³¹, less than 1% of the rate that BellSouth proposed. Subsequent FPSC TELRIC proceedings (2001) reduced that rate to \$0.102 (10.2 cents)³²

Supra's current interconnection agreement with BellSouth does not specifically address the NRC rate for UNE-P to UNE-L conversions³³. Bellsouth, in sworn testimony in Federal court has stated that they have never produced a cost study for UNE-P to UNE-L conversions³³ and the FPSC has never heard testimony

³⁰ or Universal Digital Loop Carrier ("UDLC")

³¹ FPSC order PSC-98-0810-FOF-TP, June 12, 1998.

³² FPSC Order PSC-01-2051-FOF-TP, October 2001.

³³ Or retail / resale to UNE-L conversions.

regarding these costs. Supra met with BellSouth on March 5, 2003 to discuss the conversion of Supra customers from UNE-P to UNE-L and to discuss the appropriate rate. In that meeting, BellSouth said the rate was \$49.57 for the first line on an order, and \$22.83 for additional lines on the order.

In a letter from BellSouth dated May 21, 2003, BellSouth subsequently raised the rate further to \$51.09, by improperly billing a cross-connect cost which is also recovered in the loop NRC. Subsequently they began billing Supra \$59.31 to disconnect local switching by billing Supra for a collocation cross-connect³⁴ that is never provisioned, and the cost of which is fully recovered by the loop cost study. However, as stated above, there is no rate for this in the current Supra/BellSouth interconnection agreement. A working UNE-P line, who is having the Unbundled Local Switching disconnected and a cross-connect moved from the BellSouth switch to the Supra switch, in BellSouth's view, now exposes Supra to re-paying 100% of the maximum possible loops NRC. On a perfectly good, working, in service UNE-P loop. How is it that the only portion of the UNE-P service which is not being disconnected falls subject to a full NRC charge? BellSouth does not explain this but rate that BellSouth bills to Supra is the same NRC rate for new construction of a 2-wire analog voice grade loop to a customer premises where no service currently exists.

³⁴A.k.a. A Tie Pair.

Since then, depositions of Bellsouth witnesses have indicated that the underlying cost study which justifies the \$49.57 rate³⁵, consisting of work times for 9 different departments and 10 different pay grades, is actually just 3 departments and three pay grades when converting the nearly 62% of all lines served by Copper or UDLC in the state. Additionally the work times actually taken in these three departments is one-half what was reported to the Florida commission, for such cooper / UDLC loops. (See Exhibit 2 and 3 for further detail.)

A hot cut, or UNE-P to UNE-L conversion, is a simple cross-connect as has been shown by several parties at the Commissions Oct. 28, 2003 meeting on hot cuts. At least it's simple in a proceeding to hear the BOCs request for a finding of no impairment. When faced in a cost Docket, it is suddenly a massive complex operation consisting of substantial cost which must be recovered. If only the BOC could be faced with the impairment proceeding and a rate setting proceeding in one, unified proceeding would justice be served. The current situation allows for obfuscation by the BOC in both Dockets.

All that a BellSouth central office technician has to do to transfer a customer's loop from BellSouth's switch to Supra's switch is (1) run a jumper cable from block on the Main Distribution Frame (MDF)³⁶ to an identical MDF mounted

³⁵ For installing a loop where no service exists, and for which BellSouth originally requested over \$72.

³⁶ To which the customer's loop is terminated.

block³⁷, and (2) confirm (release) the relevant Number Portability Administration Center (NPAC) so that calls to those customers' numbers can then be routed to Supra's network, once Supra confirms the BellSouth response to Supra's porting request..

Supra estimates that the entire process should take about 3 minutes per loop and that the cost should be less than \$2.00. Supra recommends that the FCC find that CLECs are impaired without access to unbundled local switching for mass market customers if the ILEC charges more than \$6.00 for a hot cut non-recurring charge.

BELLSOUTH'S INABILITY TO DELIVER TIMELY NOTIFICATION OF HOT CUT COMPLETIONS IS IMPAIRING SUPRA'S ABILITY TO SERVE MASS MARKET CUSTOMERS VIA UNE-L.

Again, completion notification is the most troublesome function in the process. The notifications are in the form of "Go-Ahead Notices" sent to the CLEC on an individual telephone number (TN) basis. Supra Telecom's experience with Go-Ahead Notices is that they are received up till 9:00 PM on the due date during a normal workload day and sometimes after midnight on busy days or during periods of BellSouth system congestion. If one assumes that BellSouth technicians end their work day on or before 5:00 PM, this causes an

³⁷ for Supra's collocated equipment

unacceptable delay of at least four hours during which the customer cannot receive calls.

The fact that BellSouth has received 271 approval does not mean BellSouth has met the higher performance standard required by the FCC to find that CLECs are unimpaired without access to unbundled local switching. Yet BellSouth repeatedly points to its 271 approval, the “independent” testing associated with that process, and DOJ findings relative to that process in arguing its compliance under 251 is sufficient to dismantle the competition that exists under UNE-P today. This is simply not equitable or legal and should be ignored.

Similarly, merely because BellSouth may have been able to perform adequate hot cuts on a few test accounts when state commissions or the FCC were watching does not mean that BellSouth is able to do mass quantities of hot cuts at high standards. These “test” orders were never actually allowed to complete, but cancelled as a part of the approved “process”. This testing completely eliminated from consideration the performance of Bellsouth personnel in the real world. It simply was a test of the BellSouth OSS, not of BellSouth the wholesale provider. If only the independent third party test³⁸ actually had to satisfy an irate customer who could not understand why perfectly good POTS service went out for a week or more during a UNE-P to UNE-L conversion, the 271 findings might have resolved differently. They are no excuse excuses for a release of obligations under section 251.

³⁸ KPMG in Florida and in many other states as well.....

The FCC indicated that neither the State's nor FCC's 271 approval is applicable to a situation in which CLECs will not have unbundled circuit switching or UNE-P. BellSouth's characterization that the 271 process has already concluded that BellSouth's hot cut process is adequate to eliminate UNE-P is unfounded. Yet they will file comments citing to this very 271 proceedings. Supra does not have non-discriminatory access to BellSouth's UNE-L loops to serve the mass market. Every BellSouth process that Supra has seen is geared for the business CLECs with lower volumes of orders consisting of high capacity lines requiring coordinated conversions. The volumes required by a residential CLEC cannot be met reliably with the highly manual BellSouth processes. As the largest CLEC in Florida, with approx one-half of all competitive lines in the state, Supra is in a unique position to comment on this. Our customers consist of 99.9% POTS service. If BellSouth truly provided non-discriminatory access to its UNE-L loops, Supra would not have received notice from BellSouth that 4 out of every 99 line on each of its batch hot cut orders were non-convertible (due to no facilities to convert the loop off of IDLC, and no process to serve UNE-L off of IDLC served loops. In this regard BellSouths actual practices are far more limited, and less accommodating than the Telcordia³⁹ requirement dictates.

³⁹ IDLC loop unbundling published In the Telcordia Document "BOC Notes on the Network", SR 2275, Issue 4, October 2000, pages 12-52 through 12-60.

BellSouth's hot cut process does not provide for local loop verification when, due to the process chosen by BellSouth, the loop must be replaced by copper or UDLC in lieu of existing UDLC or IDLC served loops. Supra suspects that this loop replacement process is causing a 4-5% rate of no dial tone during hot cut conversions. The notification of successful conversion completion must be accelerated, automated, measured⁴⁰, and scored in order to reduce service outages in the high volumes required by CLECs serving the mass market.

In addition all subsequent repair calls within 7 days of the conversion must be automatically related to the conversion and the final score be debited for those troubles found to be ILEC caused.

BellSouth's current hot cut process does not provide for timely restoration of a customer's telephone service when a telephone number has been "ported in error" due to a missed appointment⁴¹ or cancellation. BellSouth's current process. The process is still broken because BellSouth ported the number anyway without actually moving the loop. When this happens, it requires requires Supra Telecom to submit a supplement (SUP) to the BellSouth local service request ("LSR") and fax Form RF-3654 (*CLEC Port in Error Referral For Local Carrier Service Center*). Further, SUP LSRs must be sent to BellSouth LCSC and a revised Firm Order Confirmation ("FOC") received by Supra prior to

⁴⁰ Without cheating, like closing all conversions whether the loop functions or not, etc.

⁴¹ Since BellSouth never schedules an appointment on a UNE-L conversion, we are still trying to determine how one may be missed, yet the practice continues.

Supra sending a Modify SV to NPAC notice. Meanwhile, no incoming calls can be received by the customer. Thus, the current processes do not provide for timely restoration of service.

Supra cannot realistically complete its part of the LNP porting process until it receives notification from BellSouth that BellSouth has completed the hot cut. Unfortunately, BellSouth waits several hours before it notifies Supra that the conversion has been completed. However, due to the possibility that BellSouth did not do the conversion (perhaps due to a “missed appointment”) Supra cannot port the customer’s phone number prior to receiving notice from BellSouth that the conversion has been completed, and waits for completion notification rather than go through the difficult process of porting a number back to BellSouth for lines that were not converted. The CLEC is fully at the mercy of the ILEC’s timely notice (or lack thereof) in assuring service level quality to its new customer.

The economic cost of conversions is very important to CLECs with large residential customer bases that produce lower revenue per line than business accounts. Unfortunately, BellSouth has taken the course of meeting the minimum requirements for non-discrimination at the highest cost to them and the CLEC. For IDLC served UNE-P lines, BellSouth enjoys the significant cost reductions inherent in the technology, and expects the CLEC to bear extraordinary costs for IDLC lines to support the ILEC cost savings. Such

practices are contrary to the TELRIC pricing standard, particularly the “forward looking” and “most efficient” provisions, They are utilizing a very manual process with the built-in costs of an over abundance of labor instead of developing simple automated processes and cleaning up their databases to reduce the cost while improving the process. This stands in stark contrast to Verizon’s process.

Verizon has taken advantage of existing automated processes and the Internet to improve the conversion process from beginning to end, reduce out of service time, add enhancements and reduce the overall cost to the CLEC.

Supra’s experience with IDLC is that a large number of customers experience NDT conditions on or before, or in most cases up to 48 hours after the loop is successfully ported to the CLEC on the conversion due date. This indicates that many of these loops are converted to straight copper or UDLC prior to the due date, This is especially true considering that Supra Telecom tests for dial tone prior to the due date and BellSouth tests again on the due date and is quick to point out the accuracy of the jumper conversion. Work activities which are delayed until after the completion notice should be prevented as they present a high likely hood of disturbing the converted service. However the proper methodology is a precise determination of a completed order that addresses all work activities, and includes sufficient testing to preclude such outages.

The bulk process should allow for pre-qualification of lines to be converted helping to plant facilities issues or out-of-service issues. But, if efficiency is

measured as time and resources expended in a process, Supra does not agree that BellSouth's Batch Cut Process is more cost efficient, labor efficient or timely. BellSouth's Batch Cut process adds a minimum of 14 business days to the conversion interval. (See Exhibit 1) This delay causes Supra to have to re-qualify every line before submitting its LSRs to assure that nothing has changed on that line in the 14 business day interval. This is very difficult to do in the very short three day interval allowed to submit the final LSRs.

CRITERIA FOR FINDING NON-IMPAIRMENT FOR UNBUNDLED LOCAL SWITCHING IN THE MASS MARKET.

As Supra discussed in its initial comments, the FCC should find that CLECs are impaired without access to unbundled local switching for mass market customers if any of these four conditions exist:

- 1) CLECs are impaired when - The hot cut non-recurring charge is greater than \$2.00 per hot cut which constitutes an economic barrier to entry for the CLEC.
- 2) Where the ILEC has not proven the ability to cut over 1,000 loops per day per Central Office with 95% completed correctly without error (for the 7 day period following the conversion) or the same percentage of correct completions that the ILEC provides to its own customers. (Operational barrier).
- 3) In any local exchange wire center where 10% or more of the residential customer base cannot be served with UNE-L.

4) All wire centers where a CLEC has less than 3,000 customers unless there are two other competitive (non-ILEC) providers of mass market switching serving that wire center (economic barrier); meaning there should be two wholesale competitive providers of mass market switching offering wholesale unbundled local switching to other CLECs that have not yet installed their own switches.

5) Demonstrable proof that the ILEC can provision EELs, not as special access bypass, but specifically to replace the specific UNE—P service which the ILEC seeks to eliminate. A DS1/DS3 EEL shows nothing to support the elimination of UNE-P POTS service, yet this issue has been addressed as a monolithic lump of an issue without taking the requisite level of detail into consideration. The proper test is not “does the BOC provide EELs”, but “does the ILEC provide EELs which may be used to provision this UNE-P offering if it is no longer available.”

A LEC must present evidence that it has cleared each of these thresholds before it will be found that CLECs are not impaired in that market, thus relieving the LEC of pricing UNE switching at TELRIC.

Regarding condition number four, Supra is intimately familiar with the local exchanges markets in BellSouth’s service area in the state of Florida and has searched diligently for a wholesale provider of unbundled local switching other than BellSouth, including intermodal providers of service comparable in quality to that of BellSouth, serving mass market customers with their own switches.

Supra has reviewed these markets and not found a single wholesale provider of unbundled local switching. There are no areas in BellSouth’s territory where

there are two or more CLECs not affiliated with each other or BellSouth that are offering wholesale unbundled local switching to other CLECs to serve mass market customers.⁴² In fact, there is not even one identifiable wholesale provider of unbundled local switching for serving mass market customers in the state of Florida, regardless of area, much less two or more.

In its previous order, the FCC has said that switches serving the enterprise (DS1) market cannot be counted toward meeting the threshold for the mass market triggers.⁴³ Even though there is a possibility that switches being used to serve the enterprise market could be deployed to serve the mass market after the state commission implements a batch cut process, the state commission should not currently consider them for purposes of meeting the triggers. The process, work times, tasks and constraints are simply too diverse to rely on the existence of one in meeting the needs of the other. As switches are much more customer built than considered earlier, it remains quite likely that an enterprise switch would remain unable to serve a single mass market customer, or that its ability support only a limited number of mass market lines, while still serving thousands of

⁴² Additionally, it should also be noted that there are not three CLECs in any BellSouth local exchange that are actively serving mass market customers. This analysis is based on the criteria set forth by the FCC that each of the three CLECs must be actively providing voice services to mass market customers in that market and the CLEC must also be operationally and economically able and willing to provide service to all customers in that market. Additionally, there must not be any extenuating circumstances that create a significant barrier to entry such that even CLECs that self-provision their own switching would not be able to enter the market to serve mass market customers. Further, the FCC has found that CMRS switching and Cable TV switching is not a viable substitute for the availability of ILEC-provided unbundled local switching.

⁴³ See TRO para. 580.

enterprise customers. After the state commission implemented a batch cut process that was proven to work, the state commission could investigate those switches to see if they met all of the necessary criteria.

SUPRA'S OWN FACILITY DEPLOYMENT IN BELL SOUTH'S TERRITORY

Supra Telecom self-provisions switching inside 2 BellSouth wire centers within the BellSouth Florida territory: Supra currently has 16 other collocation sites served via DLC which is routed back to its switches. These 18 sites serve 14 different rate. But Supra has never been a rate of return carrier. Supra must earn the profits it reinvests into network infrastructure, and yet telecom equipment is amortized over 20, 30 or more years by various state regulators. . The economic realities of a small, profitable CLEC faces in network expansion funding meshes poorly⁴⁴ with the regulatory schedules being considered should unbundled switching be eliminated from the FCC's national minimum UNE list. All told Supra has the physical capacity to deploy 28,000 lines of POTS (DS0) service. This represents 0.4% of BellSouth's approximately 6.3 million lines in Florida. Due to various issues between the BellSouth and Supra ranging from collocation, interconnection, billing and hot cuts prices and performance, Supra is only currently serving about 16,000 customers (0.25% of BellSouth's base).

⁴⁴ For the six years following enactment of the Telecom Act of 1996, the various BOCs, litigated, appealed, ignored, and in our case had to be compelled by Federal Court order to provide UNE-P, which first occurred on or about June 17, 2001. This delay had a stifling effect on the economics of competition, and as the various parties rush headlong to terminate unbundled switching, and hence UNE-P as quickly as possible, this Commission must consider the irreparable financial harm to an already depressed Telecom Sector from this squeeze play.

These small percentages would not support an assertion by BellSouth or anyone else that Supra represents a trigger, or that Supra can serve all of its current UNE-P customers off of the existing switch. Supra is firmly committed to converting to a UNE-L platform and expanding its network. However, it has taken nearly five years of litigation (from application to space turn over to acquiring collocation spaces first applied for in 1998) to acquire 270,000 UNE-P customers, and has converted nearly 23,000 of them to UNE-L. BellSouth, our loop provider, then filters this LSR transaction in various ways in an effort to fit through a perceived loophole in the FCC orders to insert a lead into its Marketing system⁴⁵ that this specific customer, name address etc, has just been converted to UNE-L. The system then scores this information for potential winback offers including free service and \$100 cash back.⁴⁶

Over the past 10 months we have been able to retain about 16,400 of those 23,000 lines, and lost most before we realized a Return on Investment ("ROI") of that \$59.31 billed us⁴⁷ for the hot cut NRC. Then BellSouth billed Supra \$25.62 to disconnect the loop, double recovering the same work activities that it will bill to the next CLEC, in the case that the customer converted to

⁴⁵ Operation Sunrise and the associated computer systems which support it.

⁴⁶ See FPSC order **PSC-03-1392-FOF-TP** in Florida Docket 030349-TP.

⁴⁷ Improperly billed us as asserted in FPSC Docket 030301-TP.

another CLEC⁴⁸. The recovery of avoided costs, over recovery due to inflated work times, and outright double recovery make this an unviable alternative.

Supra ceased cutting new customers to its switches in February 2004 due to the economic cost of doing such businesses and must stay this course until legal or regulatory remedies change this into a viable business alternative.

TRANSITIONAL USE OF UNBUNDLED LOCAL SWITCHING

In the NPRM released in August, the FCC proposed a six month transitional period for transitioning to market rates for UNE-P and ultimately eliminating UNE-P. However, the CLECs' impairment would not be cured if unbundled local switching were only made available for a transitional six-month period. The economic and operational problems that have been described above will not be cured by a six-month transitional period or "rolling access" to the ILEC's unbundled local switching. Given BellSouth's inability to perform hot cuts in commercial volumes, Bellsouth would need at least 2 ½ years just to convert Supra's existing customer base from UNE-P to UNE-L provided that BellSouth could execute the hot cuts without any of their other typical problems.

Deployment of a new switch, if managed intelligently and pushed through at a

⁴⁸ Or rightfully to itself, as the winning carrier in that circumstance. The CLEC losing the customer is in Florida, being billed to recover a significant portion, or over 62% of the lines **more than** the costs incurred to connect the loop to the winning carrier **from the losing carrier**, and in many cases the new carrier or retail end user, which creates a double recovery for the ILEC.

rapid pace, can still take two years. A collocation space application filed today with BellSouth, if done with no errors, delays or other excuses, would not even be turned over to Supra until the end of the six months⁴⁹, at which point the technicians could just begin to place and install equipment, order circuits, and begin to make the space operational, and begin testing.

The simple fact is that any CLEC who does not already have installed enough capacity to move its customer base to UNE-L exclusively⁵⁰, will not have that capacity available by any of the discussed deadlines considered by the FCC to date. There simply isn't enough time.

The FCC is obligated to address the issues - legal, regulatory, and financial - surrounding the effect of the FCC's actions on a company whose installed base of hundreds of thousands of lines cannot be converted to UNE-L in the requisite amount of time due to a) ILEC scalability issues, or b) the ability of the carrier to deploy network infrastructure.

As Supra has previously testified in various forums, if UNE-P is eliminated, an ILEC should not be allowed to phase out UNE-P faster than it implemented UNE-P. To do otherwise would reward the ILEC for its refusal to implement UNE-P quickly as required by Congress, the FCC and the various state commissions for

⁴⁹ This would be faster than any actual rollout of collocation which we have ever experienced.

⁵⁰ But has not yet done so.

periods of up to six years⁵¹. This delay has had a stifling effect on the deployment of network facilities by competitive carriers and the overall depression in the telecom sector which dried up investment. Based on Supra's experience, investors around the country are sitting dormant, awaiting the outcome of this proceeding before determining whether to invest further in Telecom. The FCC must be cognizant that its actions in this matter have the potential to destroy the businesses of competitive telecom carriers and along with that, the funds of their investors.

BELLSOUTH HAS DIFFICULTY PROVISIONING UNE-L IN AREAS HEAVILY SERVED BY IDLC.

BellSouth implicitly recognizes the difficulties in converting UNE-P to UNE-L when the services are running over IDLC facilities. In an affidavit filed by Mr. Milner, BellSouth sets forth a list of eight solutions to the IDLC problem.⁵², ⁵³ However, BellSouth's proposed solutions do not provide for local loop verification when, due to the process chosen by BellSouth, the loop must be replaced by copper or UDLC in lieu of existing UDLC or IDLC served loops. Supra suspects

⁵¹ 1996 to 2001 in BellSouths case.

⁵² See Initial Comments of BellSouth, Attachment 3, Affidavit of W. Keith Milner, pp. 3-5.

⁵³ The first 5 of these approaches generally comport (with some BellSouth induced limitations) to the 5 options for IDLC loop unbundling published In the Telcordia Document "BOC Notes on the Network", SR 2275, Issue 4, October 2000, pages 12-52 through 12-60. BellSouth unilaterally compels the ILEC / CLEC handoff to be at the MDF, employing the modem speed degrading D4 channel bank, which then brings in significant connect and test labor activity instead of employing the Telcordia recommendation to provide such handoff at the more efficient DS1 level, utilizing GR303, TR08, narrowband, or D4 protocols, which would allow for "hands free" conversion from IDLC to CLEC according to Bellsouth 30(b) (6) witnesses.

that this loop replacement process is causing a 4-5% rate of NDT occurrences during conversions. Supra Telecom cannot provide actual data because BST declines to identify these customers prior to the conversion.

Even if a CLEC has collocated a switch in the ILEC's central office, the CLEC still may be unable to serve all of the customers in that central office without access to unbundled local switching. This is because POTS service is no longer exclusively provisioned via long 2-wire copper loops stretching from the switch to the customer premises. Although new technologies such as Integrated Digital Loop Carrier ("IDLC") (a.k.a. loop Concentration) and fiber to the home ("FTTH") has brought about economies of scale to the ILEC, they do so at great cost penalty to the CLEC seeking wholesale service to the same customer. This is because these technologies require that such facilities be modified in order to convert CLEC customers from UNE-P to UNE-L, and BellSouth refuses to recognize that cost recovery of this added work is a result of them achieving efficiency for their retail customers and is not properly recovered from a wholesale carrier under TELRIC rules. By sidestepping a rate proceeding, BellSouth bills whatever it feels it can justify from a myriad of other rates, not specifically intended to recover the precise cost of conversions. The result is the high average hot cut rate the Commission documented in the initial TRO order.

In some BellSouth wire centers, more than 70% (or more) of the customers are served by IDLC - high capacity transport circuits that run from the switch to Digital Loop Carrier ("DLC") equipment in remote terminals ("RTs"). Although this may provide the ILEC with operational efficiencies, BellSouth claims that only one switch can connect to this transport circuit⁵⁴ which prevents a CLEC from serving those customers via UNE-L because an individual unit of IDLC equipment cannot talk to more than one switch, according to BellSouth. In order for a CLEC to serve customers from the remote terminals, a CLEC must either 1) be given full control of an entire IDLC box⁵⁵; 2) have the loop transferred to an older Universal DLC ("UDLC") technology if it exists and has capacity in the RT; or 3) use one of a limited number of remaining copper loops in the RT. All of these approaches are problematic, and none address the ability to construct multiple GR303 groups, use the INA platform to route, via DCS to DS1 facilities terminations, use NGDLC virtual Remote Terminal capability to do the same, etc etc. The ILEC solutions are all labor intensive, expensive, and not forward looking.

First, BellSouth lacks a workable business process to do the conversions; and the proper motivations / inducements to create one. Second, spare copper

⁵⁴ Despite Telcordia documents which state multiple GR303 groups may be constructed to several switches on the most modern DLC equipment deployed in large numbers in this area...

⁵⁵ While the FPSC has established rates for this, BellSouth steadfastly refuses to allow Supra to purchase loop concentration facilities to Supra's switch, and denies having OSS and billing support to provide such service.

facilities do not exist in any large number where IDLC has been deployed, and those facilities that do exist are often already partially or fully used by BellSouth itself; and third, there is severe service quality degradation as a result of switching to UDLC. The use of multiple UDLC boxes can have a detrimental effect on high speed modem used by a customer for dial-up internet service. A loop constructed from multiple UDLC boxes cause a customer who enjoyed 56 kbps modem speeds as a Bellsouth customer to suffer 14.4 kbps or slower service as a CLEC customer due to the multiple A/D and D/A conversions negatively affecting the modems ability to compress data at the 56 kbps rate. Service provided to customers formerly served by IDLC technology cannot be provided in the same quality, time, or manner as it is to a BellSouth Retail, Resale, or UNE-P customer.

Supra asks the Commission to consider the ILECs' use of pair-gain technologies, including Digital Loop Carrier ("DLC") in its analysis of the loop UNE. BellSouth uses DLC to concentrate additional loops onto existing feeder circuits for their own efficiency and cost reductions, in areas where they have "run out" of loops or other business reasons. Over time, this has become the predominant method of new outside plant build-outs. Since 1995. DLC (and other) digital loop technology synthesize the normal operation of a loop by digitizing each telephone call and passing the digitized information over a single circuit consisting of DLC, fiber backhaul, and the subloop distribution to the customer

premise. The digitized signals are extracted by corresponding central office based electronics and placed on separate two wire copper circuits and fed to the Class 5 switch for UDLC, but the fiber is directly fed to the switch for IDLC / NGDLC. It is this latter IDLC mode that presents the greatest problems, the most inefficient processes, and could represent the best opportunity to solve using technical solutions – provided there was a compelling reason for the ILEC to do so. Supra encourages the FCC to address this issue and provide the proper motivation in its final rules.

Ever since modem speeds increased above 28.8 BPS, it has become essential that the loop serving a customer have, at most, a single analog to digital conversion. The compression algorithms inherent in 56K modems will tolerate no more, and indeed require non-standard implementations of the GR-303 to achieve full rated speed. GR-303 is the standard communication protocol between Digital Loop Carrier (DLC) equipment and the Class 5 switch that serves it. With a standard GR-303 interface a 56K modem can easily be limited to 28.8K or less. With two, or more A/D conversion on a given loop, communications can fall as low as 4.8K. BellSouths tariff only promise 9.6k performance, and they refuse to perform above that figure when a wholesale CLEC complains, but they spend extraordinary efforts to resolve the Public Service Commission complaints of their own customers who do not receive the full, maximum 56k transmit speed. This inequity, albeit related to Internet usage, is still a degradation of the Telecommunications loops service, and the ILEC

must not be allowed to provide the CLEC with a less capable service than it provides to its similarly situated customers. BellSouth itself recently answered Supra's interrogatories stating that "80% of the BellSouth loops could support 3 Mbps" and "50% of our Loops could support 4 Mbps"⁵⁶

100% of all wholesale loops (UNE-P or UNE-L) are tariffed at 9.6 kbps MAX. BellSouth refuses to try to do better on wholesale loops, citing its tariff as authority (circular argument??). The reality is that resale and UNE-P loops, for the most part, are every bit as good as BellSouth retail loops. However the machinations used to provide UNE-L loops result in substantially inferior loops service and the FCC should proactively address this service quality issue head on. Our analysis of UNE-L served customers indicate that had they been able to have more than the approx 22kbps (or less) performance we have repeatedly documented, many of Supra's lost UNE-L customers would have stayed despite the winback efforts. Consumers simply will not accept slow dialup speeds, regardless of reason, anymore. Regardless of the destination of the modem traffic on a loop, this is a degraded Telecommunications service, a UNE degraded from the form in which the ILEC provides the loop to itself, and as such, subject to FCC rulemaking.

Given the ubiquitous presence of the Internet, digital modem, DSL and future Advanced Services depend upon the loop characteristics, and particularly equal

⁵⁶ BellSouth response to Supra Interrogatory # 16, FPSC Docket 030301-TP.

access to control loop quality characteristics. While BellSouth has the unbridled ability to "tune" a loop to satisfy a given customer's complaint, BellSouth currently only "guarantees" its loops to be capable of 9600 baud operation!⁵⁷ Clearly BellSouth has a substantial advantage over Supra in this situation, and the opportunity for anti-competitive "win-back" of a customer whose line speed dramatically drops at conversion to Supra is all too difficult to ignore.

Typically, when a BellSouth customer switches over to Supra, either at conversion or some time shortly thereafter, or with no prior warning to Supra, the customer's line is converted run through multiple DLC systems. Immediately, the customer begins complaining about the drop in modem speed. BellSouth refuses to acknowledge this problem yet it is clearly a violation of the Telecommunications Act⁵⁸ and all FCC orders requiring parity⁵⁹, including orders that have been sustained by the Supreme Court⁶⁰. The Commission needs to set new and higher standards for the digital transmission capabilities of the loop that only ILECs are currently capable of fully enjoying.

⁵⁷ Supra's current Interconnection agreement has extended that figure, but only to 14.4 Kbps!

⁵⁸ Telecommunications Act of 1996, 47 U.S.C.A. § 251(c) (3).

⁵⁹ 47 C.F.R. § 51.315(b).

⁶⁰ *AT&T v. Iowa Utilities Bd.* 525 U.S. 366, 119 S.Ct 721 (Iowa Utilities Board II) at pg. 368, and pg. 393-395

As discussed earlier in these comments, Supra is experiencing large amounts of order failures⁶¹ with POTS loops served via UDLC, IDLC or IFITL because the facilities necessary to convert the volume of loops Supra needs to convert just are not available.

Even for bare copper loops, Supra is experiencing an unacceptable situation due to Bellsouth's poor quality line records. Initially as the conversion process started, which should just require moving a cross-connect inside the central office, Supra was being presented with a significant number of missed appointments.⁶² However BellSouth was dispatching technicians to the customer premises without ever notifying Supra of the need for an appointment. The only rational explanation for this behavior is that BellSouth was performing a rearrangement of the wiring⁶³, and couldn't find the appropriate pair due to faulty cable records. In this case, the only way to resolve this situation was to put a tone at the customer premises and find the wire at the cross-box, etc. If a technician could not get access (it had never requested), the conversion to UNE-L stopped and Supra was billed \$90⁶⁴!

⁶¹ I.e. orders which are clarified as unworkable due to lack of facilities to provision the **working** UNE-P service as UNE-L.

⁶² A missed appointment occurs when a technician, in the field, cannot get access to the customers Network Interface Device ("NID"). Yet Bellsouth **never schedules** an appointment on a UNE-L conversion, they simply flag the order as missed and move on, leaving due date and completion issues hanging until the CLEC finds the order and follows up to get it re-scheduled.

⁶³ most likely to move the customer off of IDLC to NGDLC to the older UDLC or copper

⁶⁴ Or \$80, 110, or even \$150, depending upon the labor grade which was dispatched to actually fix the problem.

When Supra objected to this behavior and insisted they stop this practice, they did, and the number of lines which reported no dial tone (“NDT”) after conversion quickly rose. In many cases it has taken multiple repair calls and customers have been without service for periods of five to six days with such regularity, Supra had to implement a program of loaning cellular phones to customers affected by loss of dial tone during a conversion from UNE-P to UNE-L until BellSouth could finally make the loop functional once again.

Interconnection Infrastructure issues.

Even when provided with identical orders, BellSouth cannot readily provision UNE cross-connects for network interconnection and trunking, without a certain percentage of orders ending up billed at the higher Special Access rates, as opposed to UNE rates from the interconnection agreement. Resolving these errors can take up to one year. Bellsouth provisions virtually all DS1 and higher cross-connects randomly from office to office requiring large amounts of time and effort to resolve. This problem exists both on the line (customer) side and the network interconnection side.

SUMMARY

Supra asks that the Commission find that CLECs serving the mass market are impaired without access to unbundled local switching. As described above and in initial comments, Supra has proposed reasonable conditions for the ILEC to meet that will ensure that CLECs are able to continue serving customers in the mass market before the ILEC is relieved of its obligation to provide unbundled local switching at TELRIC rates. Specifically, the FCC should find that CLECs are impaired without access to unbundled local switching for mass market customers if any of these four conditions exist:

- 1) The hot cut non-recurring charge is greater than \$6.00 per hot cut which constitutes an economic barrier to entry for the CLEC.
- 2) Where the ILEC has not proven the ability to cut over 1,000 loops per day per CO with 95% completed correctly without error or the same percentage of correct completions that the ILEC provides to its own customers. (operational barrier).
- 3) In any local exchange wire center where 10% or more of the residential customer base cannot be served with UNE-L.
- 4) All wire centers where a CLEC has less than 3,000 customers unless there are two other competitive (non-ILEC) providers of mass market switching serving that wire center (economic barrier); meaning there should be two wholesale competitive providers of mass market switching offering wholesale unbundled local switching to other CLECs that have not yet installed their own switches.

5) Demonstrable proof that the ILEC can provision EELs, (not as special access bypass, but) specifically to replace the specific UNE—P service which the ILEC seeks to eliminate. A ds1 / DS3 EEL shows nothing to support the elimination of UNE-P POTS service, yet this issue has been addressed as a monolithic lump of an issue without taking the requisite level of detail into consideration. The proper test is not “does the BOC provide EELs”, but “does the ILEC provide EELs which may be used to provision this UNE-P offering if it is no longer available.”

A LEC must present evidence that it has cleared each of these thresholds before it will be found that CLECs are not impaired in that market, thus relieving the LEC of pricing UNE switching at TELRIC.

Finally, any schedule that relieves a BOC from providing UNE-P should not reward the BOC for its intransigence and outright delay in implementing UNE-P as required by the statutes, and thus should be keyed not to a six month schedule, but the schedule upon which the BOC actually made UNE-P available to competitors.

Supra also asks that the Commission reiterate its requirement that the BOCs are required to provide unbundled network elements to CLECs at parity with what they provide to themselves, and to combine those elements as required. For each network element, Supra requests that the Commission specifically identify the specific rule that requires each network element to be unbundled and combined with other network elements and the specific rule that governs the pricing of that network element. Supra does not believe that USTA II, in and of

itself, changed the BOCs obligation to continue to provide unbundled network elements under section 271 as described by the Commission in its order. Supra also believe that USTA II did not change the pricing rules the Commission established in its Order. However, the LECs' interpret the unbundling and combining requirements as well as pricing requirements under USTA II differently than what Supra believes was originally envisioned by the FCC in its order despite the fact that the DC Court upheld the Commission's ruling on that issue. It is for this reason that Supra requests that the Commission undertake the laborious but necessary task of clarifying its rules for unbundling, combining, and pricing network elements and specifically discuss the application of its rules to each of the individual unbundled network elements in order to remove any confusion that may exist between ILECs and CLECs.

Respectfully submitted,

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Exhibit 1